

THOMAS R. HOGAN (Bar No. 042048
 PHILLIP E. MAROC (Bar No. 188525
 LAW OFFICES OF THOMAS R. HOGAN
 60 South Market Street, Suite 1125
 San Jose, CA 95113-2332
 Telephone: (408) 292-7600

Attorneys for Defendant
 Public Key Partners

ROBERT T. HASLAM (Bar No. 071134)
 ROBERT D. FRAM (Bar No. 126750)
 SARAH E. MITCHELL (Bar No. 187053)
 HELLER EHRMAN WHITE & MCAULIFFE
 525 University Avenue
 Palo Alto, California 94301-1900
 Telephone (415) 324-7000

Attorneys for Defendant
 RSA Data Security, Inc.

FILED

JUL 23 1997

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

269 am

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

ROGER SCHLAFLY,

Plaintiff,

v.

PUBLIC KEY PARTNERS, a
 partnership, and RSA DATA
 SECURITY, INC., a California
 corporation,

Defendants.

Case No. CV-94-20512-SW
 (PVT)

DECLARATION OF D. JAMES
 BIDZOS IN SUPPORT OF MOTION
 FOR SUMMARY JUDGMENT

Date: August 27, 1997
 Time: 10:00 a.m.
 Judge: Hon. Spencer
 Williams

1 I, D. James Bidzos, declare as follows:

2 1. I am the President of RSA Data Security, Inc. ("RSA"),
3 defendant in the above-captioned action. I have served as RSA's
4 president since 1986. I also served as president of Public Key
5 Partners ("PKP") from the time of its inception in April 1990
6 until its dissolution in 1995. I make this declaration in support
7 of PKP's Memorandum In Support of Motion For Summary Judgment. If
8 called as a witness, I would and could competently testify to the
9 following facts.

10 2. In 1990, the market for computer security included
11 passwords, PIN numbers, as well as encryption and other
12 technology. Thus purchasers considering data security options
13 around 1990 looked at password and encryption products as
14 substitutes for each other. In making sales presentations to
15 potential customers, I therefore had to sell against entrenched
16 symmetric key and password systems.

17 3. Within encryption, in 1990 the dominant technologies
18 were the traditional symmetric key systems. One of the more
19 popular and well-established technologies was the DES system, a
20 symmetric key system that had been developed and tested in the
21 1970's. The large vendors of such systems included IBM whose
22 engineers had played a key role in developing the DES system.
23 AT&T was another established provider of computer security
24 systems.

25 4. Although invented in 1976, public key systems were
26 still novel and unproven in the commercial world as of 1990.
27 Acceptance of public key systems was slow, in part due to the fact
28 that some of the early approaches, such as the trapdoor knapsack,

1 had been broken. Although the RSA algorithm was more promising,
2 it too was slow to obtain commercial acceptance. RSA was founded
3 in 1983 and very nearly went under in late 1985. It finally
4 entered into its first significant license with Lotus in 1986.

5 5. In 1990, public key systems constituted a tiny portion
6 of the computer security market, perhaps less than 1% of sales.
7 Public key similarly constituted a small portion of the encryption
8 market, constituting perhaps 1% of the encryption products sold.

9 6. One of the difficulties that emerging public key
10 technology faced in breaking into the market was the fact that
11 this technology was being sponsored by small start-up companies
12 without well-established distribution channels. This problem was
13 compounded by consumer confusion arising from the fact that there
14 were several different and not very well-understood patented
15 public key technologies.

16 7. PKP was intended to help foster the development of
17 public key technology by providing a convenient and low-cost
18 outlet for the rights to the public key patents and therefore the
19 public key technology. It was hoped that this small measure of
20 efficiency would encourage companies to license and make products
21 incorporating public key technology.

22 8. The partners in PKP, i.e., RSA and Cylink, were free to
23 and did sell their own competing versions of public key
24 technology. At no time was the licensing of the public key
25 patents tied to the purchase of any hardware and/or software
26 products.

27 9. During the life of PKP, the market for computer security
28 and encryption products remained competitive. The presence in the

1 market of non-public key products and technology was a factor that
2 PKP had to take into account in attempting to license the public
3 key patents.

4 10. I understand that Mr. Schlafly has alleged that PKP
5 engaged in improper discriminatory pricing of the PKP patents.
6 This charge has no basis. The PKP patents were licensed on a non-
7 discriminatory basis, where like cases were treated alike. In
8 fact, PKP published license terms and prices.

9 11. At the time RSA entered into PKP in 1990, Cylink
10 represented to me that the Stanford patents covered all forms of
11 public key cryptography and that the Stanford patents were valid.
12 MIT and Stanford had previously entered into a cross-licensing
13 agreement on the basis of this understanding of the Stanford
14 patents, implicitly bolstering Cylink's contentions. While there
15 always has been some uncertainty as to the proper scope and
16 validity of the Stanford Patents, that issue had not been
17 adjudicated at the time that PKP was formed. In light of this
18 uncertainty, and the desire to avoid patent litigation, PKP
19 constituted a good faith solution. As it turned out, the PKP
20 partners were ultimately unable to resolve their disagreements
21 short of litigation. It was only in the course of the litigation
22 over the Stanford patents, which began in late 1995 following the
23 dissolution of PKP, that RSA developed a clear and firm view of
24 the facts and law governing the scope and validity of the Stanford
25 patents. That understanding, however, simply cannot be
26 transported back in time without completely distorting history.
27 In short, whatever the understanding of the parties that developed
28 during the course of litigation over the Stanford patents, at the

1 time that the PKP was formed I had a good faith basis for
2 believing Cylink's representations regarding their breadth and
3 validity.

4 I declare under penalty of perjury that the foregoing is true
5 and correct.

6 Executed at Redwood City, California, this 23nd day of July,
7 1997.

8 
9 D. James Bidzos